BRIEF

In Support of Petition for Writ of Certiorari.

I.

JURISDICTION.

Certiorari is sought in this case upon the authority of ection 240 (a), as amended [28 U. S. C. A., Section 347 a)], which gives this Court jurisdiction to review any dgment or decree of the United States Circuit Court Appeals.

II.

The judgment became final on December 18, 1940, when ne petition for rehearing was denied.

III.

If, from the record or facts of which the Court may take otice, it appears that the conviction cannot stand, plain rror appears on the record, and the judgment will be eversed.

Clyatt v. U. S., 197 U. S. 207;
Gambino v. U. S., 275 U. S. 310.

IV.

Where there is no evidence to support the charges in he indictment, the conviction should be set aside.

V.

The arrest of a co-conspirator precludes any further ction by him, and puts an end to the conspiracy and enders statements made by him after his arrest incom-petent against his former co-conspirators.

Graham v. U. S., 15 F. (2nd) 740;
Mayola v. U. S., 71 F. (2nd) 65.

VI.

A narrative of past events by a co-conspirator is not admissible in evidence.

Van Riper v. U. S., 13 F. (2nd) 961 at p. 967;
Clark v. U. S., 61 F. (2nd) 409 at p. 410.

The language of this Court in Sheppard v. U. S., 290 U. S. 96, in relation to the erroneous admission of an alleged dying declaration, pertinently applies to the error of admitting testimony concerning conversation with Chester Tork outside the presence of petitioners, after Tork had been arrested. In that opinion the Court says: "The testimony now questioned faced backward and not forward. This at least it did in its most obvious implications. What is even more important, it spoke to a past act, and more than that, to an act by someone not the speaker" (Sheppard v. U. S., 290 U. S. 96).

VII.

Courts will not receive testimony of a witness as to what some other person told him as evidence of the fact asserted.

Will v. Tornabells, 217 U. S. 47;
Nelson v. Flint, 166 U. S. 276;
Hopt v. Utah, 110 U. S. 574.

VIII.

Acts and declarations made and done after a conspiracy has ended are not competent against a co-defendant.

Logan v. U. S., 144 U. S. 263;
Leady v. U. S., 280 F. 864;
Brian v. U. S., 17 F. (2nd) 741;
Feder v. U. S., 257 F. 694.

IX.

Failure of a party to call an available witness possessing peculiar knowledge concerning facts essential to a party's case gives rise to an inference that the testimony of such person would not sustain the contention of the party.

22 C. J., pp. 115-116;
10 R. C. L. 884.

X.

In order for one to be guilty of making a false entry, it must be shown by competent evidence that the act was willfully done. It must be shown that it was done with full knowledge of the falsity. The word "willfully" denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. When used in a criminal action it means an act done with a bad purpose.

U. S. v. Murdock, 290 U. S. 389;
Felton v. U. S., 96 U. S. 699;
Potter v. U. S., 155 U. S. 438;
Spurr v. U. S., 174 U. S. 728.

Respectfully submitted,

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